

PRELIMINARY AMENDMENT

Serial Number: Unknown

Filing Date: Herewith

Title: TRANSISTOR WITH VARIABLE ELECTRON AFFINITY GATE AND METHODS OF FABRICATION AND USE

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Dkt: 303.324US4

and reserves the right to swear behind Forbes at a future date. The applicant also respectfully submits that Forbes is not prior art for the following reason.

As provided in Pub. Law 106-113, enacted November 29, 1999, a reference qualifying only under 35 U.S.C. § 102(e) cannot be used in support of a rejection under 35 U.S.C. § 103 where the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. *See*, 35 U.S.C. § 103(c). The applicant respectfully submits that the subject matter of Forbes and the present application were owned by the same person or subject to an obligation of assignment to the same person at the time the invention was made. Accordingly, Forbes cannot be used in support of rejection of the present claims under 35 U.S.C. § 103(a).

The applicant respectfully submits that all of the pending claims are in condition for allowance and such action is earnestly solicited. The Examiner is invited to telephone the below-signed attorney at 612-373-6973 to discuss any questions which may remain with respect to the present application.

CONCLUSION

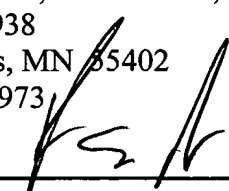
The Applicant respectfully requests that the preliminary amendment described herein be entered into the record prior to examination and consideration of the above-identified application. Please charge any additional fees deemed necessary to Deposit Account 19-0743.

Respectfully submitted,

LEONARD FORBES ET AL.

By their Representatives,

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Date 18 OCTOBER 2000 By   
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"Express Mail" mailing label number: EL618477137US

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This paper or fee is being deposited on the date indicated above with the United States Postal Service pursuant to 37 CFR 1.10, and is addressed to the Commissioner for Patents, Box Patent Application, Washington, D.C. 20231.